

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Raphael Osborne

v.s

United States of America

FILED
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U.S. DISTRICT COURT E.D.N.Y.

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MEMORANDUM OF LAW IN Support OF MOTION
Under 28 U.S.C. 2255 To VACATE, SET ASIDE,
OR CORRECT Sentence by a PERSON IN Federal Custody

Raphael Osborne, Movant prose moves this court
Pursuant to 28 U.S.C. 2255 to Vacate the
Judgement and Released from illegal dentention..

Osborne raises 7 Grounds for Relief:

The Sworn Affidavit of Kurtis KNOXX
the Government failed to
interveiw with C.I maurice
erveiw was held by private
ed by Kurtis knoxx phillips
idence was Favorable to defendant
dy v. maryland also Government

(2)

failed to turn over Government witness Denzel Smith Phone records, Text messages and cell tower information from the day of October 13, 2012 Shooting of Maurice Gardner this evidence is favorable to defendant in light of Brady v Maryland Osborne is being deprived of his liberty with out and in violation of due process of law..

Ground 2, Trial Counsel John Carman was ineffective for failing to raise brady violation during trial for Prosecution failing to turn over Government witness denzel Smith Phone Records Cell tower info and text messages before trial. Osborne conviction cannot stand and shall be vacated in light of Washington v. Strickland and Brady v. Maryland

Ground 3, Appeal Counsel Robert Boyle ineffective for failing to raise on direct appeal and prosecutor

Ground 4, Raphael Osborne is to relief under Supreme Court of States v. Davis, 139 S.Ct. 2319

(3)

US. v. Brown, NO. 17-1188, 2019 U.S. App. lexis 38056 (2d Cir Dec 19, 2019) RICO conspiracy 924(c) (Davis) see, Gonzalez, (2d Cir) 2019 (Davis) Jury general verdict did not make 924(c) predicate clear.

Ground 5, TRIAL LAWYER JOHN CARMAN WAS INEFFECTIVE for not raising issue of perjury when NASSAU County detective Colby gave false testimonie relating to C.I. Shooting of maurice Gardner also Prosecutors allowed false testimonie to go uncorrected. Osborne's conviction cannot stand and is entitled relief in light of Washington v. Strickland and NAPue v. Illinois

Ground 6, Trial lawyer John Carman was Ineffective for failing to Show jurors evidence that Prove case agent Biddiscombe gave false testimonie to jurors at trial and Prosecutors allowed false testimonie into evidence uncorrected. Osbornes conviction cannot stand and

shall be vacated in light of Washington v. Strickland and Napue v. Illinois

Ground 7, TRIAL LAWYER JOHN CARMAN was ineffective for not raising the relevant issues why Detective JOHN Mitchell should be called as a witness. Osborne conviction cannot stand and shall be vacated in light of Washington v. Strickland also Crane v. Kentucky, 476 U.S. 683, 687 (1986) Chambers v. Mississippi, 410 U.S. 284, 302 (1973) Due process clause and 6 amendment confrontation clause it is well settled that a criminal defendant has a right to prepare a defense.

Osborne request that this Court ~~vacate~~ ^{GRANT} this Motion and vacate Judgement releasing Osborne from custody.. Osborne prays for relief. Respectfully..

*
Front and back

Ground 1
1-5 PGs

Basis For Relief facts Supporting Ground 1

- (1) Raphael Osborne is entitled to relief in Ground 1 because his conviction violates due process of law on Grounds that (1) prosecutors had a duty to before trial disclose favorable evidence to defendant such as Government witness Denzel Smith, cell tower information, phone records and text messages between *Smith and Derrick Hernandez on the day of shooting of Confidential Informant, Maurice Gardner, withholding such evidence is a Brady violation, see Brady v. Maryland 373 U.S. 83, 83, S.Ct 1194 (1963) withholding Denzel Smith cell tower, text messages and phone records denied Osborne to prepare a defense and establish case agents and investigators intentionally framed Osborne for shooting Maurice C.I Gardner then coached Denzel Smith to give false testimony during trial saying i directed him to shoot C.I Gardner on Oct 13, 2012.
- (1) Denzel Smith phone records would have established him and Osborne had no contacts days before and on day of C.I shooting, cell tower location would have shown jurors Smiths cell phone and Osbornes Hernandez, and Kurtis Knox Phillip was never is same location Proving Smiths testified falsely saying said individuals attended a meeting together day before shooting of C.I where he was allegedly ordered by Osborne to →

(2)

Shoot C.I Gardner.. cell tower records would have been favorable to Osbornes defense to impeach that false testimonie.. (2 agent acker and detective mitchell both investigators reveiued Phone records as stated in warrants for Osborne's cell phone and hernandez cell phone.. ^{*see Acker warrant and Detective mitchell warrant} *Specifically investigators reveiued text Messages hours surrounding Gardner shooting and phone calls between Osborne and hernandez.. Phone records showed Osborne and hernandez had no text or calls day of C.I Gardner Shooting.. both investigators intentionally

*lied to judges in warrants saying osborne and hernandez had contacts hours surrounding C.I Shooting..

*Denzel Smith testified at trial ^{stating} ~~see~~ recieved see D.Smith:2152 D.Smith:2054

*text messages from hernandez on day of C.I

*Shooting when hernandez Allegedly gave him a

*GUN ordering him to Shooting C.I maurice Gardener..

This evidence was Favorable to Osborne defense

because.. (1 Osborne could have shown investigators agent Acker and detective ~~mitchell~~ Knew exactly who hernandez had contacts with 2 hours surrounding Shooting on day of C.I Shooting hernandez phone was confiscated specifically for text messages because

*Witness said they seen hernandez send text messages moments before C.I Gardner was shot see acker warrant for hernandez phone *Denzel Smith phone records, text messages Cell tower location was known to investigators At the Time warrants was prepared because they investigated All records, texts, and cell tower locations of Hernandez

(3)

and Osborne. Phone contents of Hernandez shown investigators Denzel Smith's number and text messages proving Agent Acker and Detective Mitchell had evidence who shot C.I. Gardner such as text messages, phone records and cell tower location of Denzel Smith from day of C.I. shooting. This evidence proves Both investigators and every prosecutor in this case worked together to frame Osborne for shooting Maurice Gardner and changing story before trial saying Osborne ordered Denzel Smith to shoot Gardner. These text messages and cell tower location could have prove Osborne innocence at hearings before trial. Failure to disclose this evidence violates due process of law. Osborne conviction shall be vacated on Grounds of police misconduct and prosecutor misconduct. and violation of due process of law, also *See newly discovered evidence the sworn affidavit of Kurtis Knox Phillip revealing Government with held Brady material from defendant Osborne, being the recorded interview of Maurice Gardner with Kurtis Knox Phillip private investigator hired by Phillip's attorney failure to disclose such evidence known to be favorable to defendant violates due process of law because it denied Osborne a fair opportunity to prepare a defense.

Evidence from the recorded interview with C.I Maurice Gardner was favorable to Osborne defense because it could have been used to impeach Denzel Smith's testimony when C.I Gardner said Phillips was not involved in shooting him. Such evidence could have shown jurors D. Smith gave false testimony at Osborne's trial about Knox, Osborne, Hernandez and Smith's involvement in shooting. Also the recorded interview with C.I Gardner was favorable to Osborne's defense because jurors could have seen him stating that he lied to police to have Phillip falsely convicted in the past that was favorable to Osborne's defense because Osborne was charged falsely with shooting Maurice C.I Gardner and still is charged with Attempt murder on Maurice Gardner. Government's theory was he picked defendant Osborne out a line up. Government knew along with agents knew Maurice Gardner was lying. (1* He was shot from behind, (2 Eye witness was shown line up containing Osborne's picture and failed to identify Osborne, (3* Osborne's phone tower records shown Osborne was home when C.I was shot, (4 Osborne's home security cameras showed he was home which investigators, prosecutors never turned over to Osborne before trial to prepare a defense, (5) Denzel Smith's cell tower records which was known to investigators along with text messages surrounding shooting of Maurice Gardner showed who evidence pointed too but investigators lied and placed Osborne at the scene.

of shooting of C.I investigators even intentionally lied saying i had contacts with hernandez on day of C.I shooting when records, text messages tower location showed it was Government witness denzel smith. This evidence proves Osborne was Framed and should have been turned over before trial so Osborne could prepare a defense. Osborne conviction cannot stand it violates due process of law in light of brady v. maryland. Osborne is entitled to relief.

* Facts Supporting Basis for relief in Ground 2*

Raphael Osborne is entitled to relief in Ground 2 because Trial lawyer John carman was ineffective for failing to raise brady violation during trial when Government witness testified "Denzel Smith" revealed that he recieved text messages from derrick hernandez on day of C.I Shooting of Maurice Gardner.

* These text messages was favorable to Osbornes to defense because it could have shown detective mitchell intentionally lied to judge saying it was Osborne who recieved text messages 2 hours surrounding shooting from hernandez phone* see mitchell warrant. for Osborne and hernandez phone* also Denzel Smith Text messages, Cell tower information was known

to det. Mitchell and F.B.I agent acker because they specifically review Phone records of Osborne and Hernandez. Phone showed investigators the existence of the denzel Smith text messages from day of shooting of C.I. with Hernandez. Making this evidence certainly relevant because Osborne could have established investigators ~~was~~ intentionally coached Maurice Gardner to say Osborne shot him and coached denzel Smith to lie during Osbornes trial saying Osborne ordered hit to shoot C.I.. Trial Lawyer John Carman failed to show Jurors brady material which proves Government witness Gary Mosley was charged with ordering hits on Maurice Gardner and another C.I..

John Carman was ineffective for not playing recorded Phone calls of Gary Mosley which detective Mitchell personally submitted in warrant when Gov. witness G. Mosley was charged for ordering hits and Osborne was falsely charged with shooting C.I. Gardner. Osborne could have establish prosecutors allowed witness denzel Smith to testify falsely and allowed detective Mitchell to coach denzel Smith when detective Mitchell knew from the evidence in his warrant Osborne did not order hits on informants.

Trial lawyer John Carman Failed to present this evidence that proves Osborne is innocent and officers was bias. Osborne conviction cannot stand in light of Washington v. Strickland and Brady v. Maryland. Osborne is entitled to relief. In Ground 2 *

Basis for Relief

Facts Supporting Ground 4

Raphael Osborne is entitled to relief in Ground 4, under Supreme Court Case See United States v. Davis, 139 S.Ct. 2319 (2019) Conspiracy to commit Hobbs act robbery did not qualify as a crime of violence under 924(c) DAVIS, 903 F.3d at 485 same.. Osborne was convicted of 5 counts arising under 18 U.S.C 924(c) Counts 5, 8, 14, 17, and 19 and the jury verdict did not make it clear when it charged Osborne the verdict read by jurors made it unclear of what exactly Osborne was found guilty of.. all 924C counts and charges connected to 924C counts shall be vacated along with Osborne conviction in light of Davis..

Basis for Relief

Facts Supporting Ground 5

Trial lawyer John Carman was ineffective during Osborne's Trial during Cross examination of det. Colby. Government witness detective Colby gave false testimony about C.I Maurice Gardner shooting when asked when was the first time he heard Osborne wasn't the shooter in Gardner investigation officer Colby

Basis for Relief

Facts Supporting Ground 3

Raphael Osborne is entitled to relief in Ground 3 because ~~the~~ appeal lawyer Robert Boyle failed to raise Brady violation on direct appeal. Robert Boyle was aware of Denzel Smith's testimony when Smith revealed during trial he received text messages from Hernandez on the day Maurice Gardner was shot. Evidence was favorable to Osborne's defense because (1) Osborne could have proved Case Agents Acker and Detective Mitchell intentionally withheld evidence from the judge when both prepared warrants and reviewed phone contacts of Osborne and Hernandez. See Acker warrant for Hernandez's phone. See Det. Mitchell warrant for Osborne's phone. Both investigators lied to judges under oath saying Osborne and Hernandez had contacts surrounding the shooting of C.I. when phone records showed otherwise. It was Denzel Smith, Government witness, and Denzel Smith admits this at Osborne's trial. Appeal lawyer Robert Boyle provided ineffective counsel on Osborne's direct appeal. Osborne is entitled to relief in light of ~~Washington~~ *Washington v. Strickland*.

Ground 5 continued

4 and his partner detective mitchell was aware that Osborne was not identified as Shooter of Maurice Gardner when eye witnesses failed to pick Osborne out of line up days after shooting John carman Failed to show jurors the sketch and the police Photo array where witness told them osborne wasnt the shooter before Nassau investigators prepared warrant for osborne arrest.. Colby gave false testimonie saying the first time he heard osborne wasnt the shooter was after osbornes arrest in april 2013.. see colby testimonie.. prosecutors allowed colby to testify falsely and let it go uncorrected.. John carman failed to raise issue of prosecutor misconduct for prosecutors allowing detective colby to Give false testimonie.. Osborne conviction shall be vacated on Grounds of due process of law.. Osborne is entitled to relief in light of Napue v. Illinois, washington v. Strickland..

Basis for Relief
Facts Supporting Ground 6

Raphael Osborne is entitled to relief under →

washington v. Strickland and Napue v. Illinois.
Trial lawyer John Carman was ineffective
during Osbornes trial. (1) John Carman Failed to
show jurors fire arm trace summary which
Proves agent Biddiscombe did not handle, control
or Authorize Gunsales in 2011 and 2012.. Biddiscombe
Name is not on firearm trace summary evidence
agent Biddiscombe is not on videos of these
Gunsales in 2011 or jan 2012.. Biddiscombe
gave false testimony saying he doesn't
know who the C.I Abdul Robinson is? but
videos show abdul robinson and C.I Alton young
together also fire arm trace evidence has
abdul Robinson name as the person who
recovered firearms.. abdul Robinson is identified
on Federal GunSale evidence that Biddiscombe
claimed at Osbornes trial He authorized.. carman
failed to raise prosecutor misconduct for
prosecution allowing tainted GunSale videos
and evidence into Osbornes trial.. also carman
failed to raise issue of agent Biddiscombe
giving false testimony about gunsales operation
saying maurice gardner was the First C.I
used.. when evidence shows Alton young and
abdul Robinson not maurice Gardner on first
GunSales.. Prosecutors Knew Biddiscombe gave false

Testimonie and allowed it to go uncorrected
See Biddiscombe testimonie* John carman was
ineffective for not Objecting to 2011 Gunsale
and 2012 Gunsale with abdul Robinson and alton
young as C.I's evidence showed guns was recovered
from abdul Robinson not derrick Hernandez
Proving evidence was falsified and admitted into
osbornes trial. See fire arm trace summary prepared
by unknown federal agents also videos dont show
any agents Authorizing those specific sales..
Osborne Conviction shall be vacated on Grounds
of ineffective Counsel, Prosecutor misconduct and
violation of Osbornes due process.. Napue v. Illinois
Washington v. Strickland.

Basis for Relief in Ground 7

Facts Supporting Relief in Ground 7

Trial lawyer gave ineffective assistance of Counsel
at Osborne's trial; John Carman promised
Osborne that He cannot be convicted of
Ordering hit on C.I Gardner because Gov. witness
Gary Mosley was charged with Ordering hit on
C.I and He promised that Gary Mosley phone calls
Ordering Hits on 2 C.I's will be played for
Jurors at Osbornes trial.. Detective Mitchell is
the relevant witness to these Gary Mosley calls +

because detective mitchell included the Gary masley calls in his warrant affidavit. John carman argued these calls was brady material. The foregoing placed the government and court on notice that the masley call was relevant to Osborne's defense evidence. John carman was ineffective for not demonstrating mitchell's bias and why it's relevant for mitchell to be called as defense witness.. Osborne was forced to put court on notice that detective mitchell is coaching witness to lie on stand. Osborne raised issue mitchell was biased and should be able to call as defense witness to show jurors mitchell is coaching denzel smith to lie on Osborne about ordering hit on C.I Gardner.. Osborne was denied to call detective mitchell as defense witness.. Osborne could have shown jurors Detective mitchell received phone records from Osborne and Hernandez from day of C.I shooting and was biased saying Osborne shot C.I when tower records show Osborne at home.. also Osborne could have shown jurors mitchell was biased saying Osborne received text messages from Hernandez 2 hours surrounding C.I Gardner shooting when records show he knew G.W denzel Smith received text and intentionally lied saying it was Osborne.. Trial lawyer was ineffective and Osborne case shall be vacated in light of Washington v Strickland and Napue v. Illinois..

Ground 7

also trial lawyer could have raised issue of Detective John Mitchell swore under oath in affidavit none of the primary targets of this investigation are appropriate subjects for immunity because they committed violent acts and will give untruthful testimony. This evidence proves Mitchell coached each and every witness to give false testimony at Osborne's trial. John Carman was ineffective for failing to raise this issue and show evidence to jurors that Affidavit where he stated the targets of this case will lie about their role in the conspiracy. See Mitchell warrant Affidavit*. Osborne case, sentence shall be vacated on grounds of ineffective counsel and due process of law. Washington v. Strickland, Napue v. Illinois.

*1) kurtis knox philip affidavit
is submitted for evidence in
Ground 1..

The rest of the evidence to support
Grounds is already in possession of
Government. Such as warrants, F.b.i and nassaus
investigators Agent acker and Det. mitchell
Affidavits is evidence.

Do to the COV-19 VIRUS

Respectfully, Raphael Osborne prays for
relief on all grounds raised in memorandum
of law this is a prose written and im
asking for the court to guide and assist
me in any way possible for im currently
on lock down and had no law library access
since i was granted an extension to file
the memorandum. Please accept to the best
of my ability this Hand written memorandum of law

4/7/20

signed and put in mail Box

Raphael Osborne

Raphael Osborne

AFFIDAVIT OF KURTIS "KNOXX" PHILLIP"

COMES the affiant, Kurtis, and states the following:

Denzel "Trigga" Smith, A Government's witness, provided information in proffer meetings with federal agents and at trial in federal court for the Eastern District of New York that a meeting occurred on or about October 12, 2012 Between Raphael "Gusto" Osbourne, Kurtis "Knox" Phillip, derick "Dnice" Hernandez and himself Mr. Smith further Testified that the purpose of this meeting was to discuss and plan the attempted murder of Maurice "MOE-Diddy" Gardner, at the time a known confidential informant for both State and Federal Authorities. It is the intentions of Mr. Phillip, in in this Affidavit, to refute the factual basis of Mr. Smith's testimony and to demonstrate that federal Authorities could reasonably be presumed to have known the erroneous Nature of said testimony at the time it was given.

1) Evidence ignored by the government of cell phone tower records showed that Philillip, Osbourne, Hernandez and Smith were never in the same area on or about October 12, 2012 Essentially Refuting the plausibility that said meeting could have occurred.

2) All of the parhes mentioned above were subject of government wire taps for the entire period in question. Those wire taps clearly demonstrate that Phillip Rarely, if at all with Osbourne. But that they dis know each other. Phillip and Osbourne specifically never communicated during the period of the wire taps.

3) The alleged motive for the murder of Gardner was retaliation for Gardner setting up Hernandez, Osbourne and others for multiple controlled sales and attempted sales or fire arms. Which Phillip did not participate in. Leaving Phillip without a motive for murder. Also in a recorded. Interview with an investigator hired by Phillip's attorney, Gardner admitted that Phillip didn't shoot him, and didn't have anything to do with the shooting, and that he had previously provided false statement statement against Phillip in the past in

a case where Phillip was convicted of a robbery in which he was innocent of.

4) Eye witnesses to the shooting failed to identify any of the above named subjects as being present at the time of the shooting. Along with other evidence and information the government was aware of showing Phillip nor Osbourne wasn't present or in the area...of the shooting.

5) It is the assertion of Mr. Phillip that the verifiable facts listed above refute the testimony provided by Smith and demonstrated that the government knowingly admitted false testimony into federal court proceedings.

6) Moreover, the above evidence clearly demonstrated that Ralphael "Gusto" Osbourne never attended a meeting nor did he ORDE Denzel "Trigga" Smith to Murder Maurice "Moe- Diddy" Gradner.

FURTHER AFFIANT SAITH NAUGHT. Sworn to under penalties of perjury. 28 U.S.C. §1746.

/s/


Kurtis Phillip
3/2/18

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